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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 860

MILES H. ROBINSON, M.D.,
Petitioner,

vs.

R. W. STEVENS, M.D., ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

MILES H. ROBINSON, M.D.,
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Petitioner, pro se.

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The Daily Record Co., Baltimore 3, Md.

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Miles H. Robinson, Petitioner, replying to the brief of respondents, offers further argument as follows:

On Question No. 1

Contrary to the statement of defendants (Br. 2), the question of monopoly was raised in the pleadings and will be cited below after preliminary correction of a misleading statement in defendants' brief which deals with one of their first and basic steps aimed at monopoly. Defendants want this Court to believe that the membership of the Walla

Walla Grievance Committee was kept secret only from the public:

> "The names of the committee were not given out at first to protect the members of the committee from crank calls and annoyances" (Br. 4).

Whereas, they fully admitted in their testimony (R. 1055, 1492, 1335, 939) that the membership of the Committee was deliberately kept secret from plaintiff and other members of the Society, for example:

> "Q. Now, the membership of this grievance committee in Walla Walla was kept secret from the other members of the society, wasn't it?
>
> A. Yes" (testimony of Stevens, chairman of the committee (R. 1055).

The trial Court in its Oral Decision likewise ignored this vital feature, taking cognizance only of the fact that the committee membership was kept secret from the public (R. 1643), a distinction which removes practically all stigma from the committee.

Unwittingly, defendants' explanation in their brief (p. 4), when coupled with the truth about the secrecy of the grievance committee, clarifies their monopolistic plan. From the standpoint of a monopolist, any communications to this star chamber "grievance" committee, even any from the Society membership, would naturally constitute unwelcome interference equivalent to "crank calls and annoyances".

Monopoly does not tolerate the democratic process and it cannot survive under a balance of power which operates out in the open and prevents the enslavement of men.

Now, as to whether the question of monopoly was raised in the pleadings and presented to the courts below, Petitioner cites pleadings and testimony as follows:

"* * * the defendant doctors * * * used the defendant medical bureau and the secret Grievance Committee as a means to nullify and pervert the democratic functions and powers of the defendant Society for the purpose of getting for themselves unfair financial and professional advantages not only under the current program, but also in the anticipated greater government program which they assumed would utilize their established bureaucratic organization and maintain them in permanent control; that defendants thereby did get for themselves unfair financial and professional advantages at the expense of plaintiff (emphasis added, Complaint, ¶XXIV).

Plaintiff was a focus for nearly half the Society membership trying to stop this monopolistic trend at its beginning:

"After the plaintiff's criticisms of the secret Grievance Committee had gained the support of almost half the membership of the Society, as shown by an official test vote on November 20th, 1950, the fear and enmity of defendants were aroused * * *" (emphasis added, Complaint, ¶XXV).

Further presentation of monopolistic intent is found in the admission of the defendants that the regular disciplinary system of the Society contained disciplinary procedures which were "adequate, fair, and democratic" (Def. Answer, ¶XVIII); and that survival of the Walla Walla grievance committee had national significance:

"You can easily imagine what effect this decision will have on any future use of the Grievance Committee either locally or anywhere in the country (Ex. 169, p. 3).

Argument of defendants that the new grievance committee system was a "public relations" agency and not a disciplinary and judicial system with a monopolistic purpose is contradicted by the following evidence:

"* * * directed * * * that the State Grievance Committee be eliminated as a court of original jurisdiction" (Minutes state association, R. 506, emphasis added).

"Our medical society would like an opinion from the committee of your organization (State Association Grievance Committee) as to what we should do from here. Are we justified in suspending him from the hospital staffs, or from the medical society, or what other discipline activities would be in order?" (Ibid, R. 496, emphasis and contents of parentheses added).

"Dr. Berge said he understood the Grievance Committee was in the position of an appellant court with direct jurisdiction * * *" (Ibid, R. 497, emphasis added).

As plaintiff testified:

"Well, when you tell a sick person or, let's say, a patient not to pay a doctor's bill and that telling comes from the secretary of the society on official stationery, I think that the doctor has been disciplined" (R. 728).

The whole purpose of the new Grievance Committee system was disciplinary; and secret and irregular procedures were the method of operation.

The grab for monopolistic power via this grievance committee system was so acute that plaintiff's opposition nearly caused the local to split off from the national branch of the medical union:

"* * * threatened secession of the Walla Walla Society from organized medicine" (letter from legal counsel of state association, Ex. 202, p. 3).

The Grievance Committee was set up to police the Medical Bureau, and the executive authority of each of these two bodies was vested in one man (R. 937), whose salary was wholly paid by the Medical Bureau (R. 937). These facts add to the picture of monopoly. A long established Walla Walla doctor whose practice was so large that he

could ignore the Bureau (R. 1375) wrote that the Bureau had "eaten up the Society":

> "You must remember that the Medical Society and the Bureau are practically synonymous, and the Bureau has eaten up the Society. The whole thing is a business machine, and the lay secretary of the Bureau, ever since the last Society meeting I attended, is the active executive of the Society. The Society has been thrown, hogtied, and branded and has practically ceased to exist as such. * * * It is absolutely ruinous to take on the organization in a fight * * * I don't want to see you lynched" (letter from Dr. Campbell, dated 10/24/50, Ex. 28, emphasis added).

Petitioner does not seek to exaggerate the importance of his case, but wishes to emphasize the fact that monopoly, like freedom, originates at the periphery. It cannot be denied that the defendant AMA and its local branches constitute a web of power not matched even by the labor unions, for in medicine there is no other union; the AMA is omnipresent, omniscient, and omnipotent. As the trial Court observed:

> "Well, I should assume the expulsion would be comparable to his disbarment. It is a final action unless there is reinstatement, and the reinstatement couldn't take place under the regulations for a year, I understand."

The issue of monopoly was presented to both the trial Court and the Appeal Court as follows:

> "The preponderance of the evidence is that the Appellees, for their own financial advantage and in violation of the Society Constitution and By-Laws, took over the police power of the Society by means of an unprecedented, star chamber type of disciplinary agency, the secret so-called Grievance Committee, which usurped the regular disciplinary authority of the Society and its elected trustees; and in so doing,

also maintained and enlarged the **monopoly** of medical business held by the Appellee Medical Bureau * * *" (Petitioner's appeal brief, p. 68).

"Well, I was urged to join the bureau by the men who were already in it, and particularly by Mr. Fullerton, the manager of the bureau. He told me that they were anxious to have everybody in the bureau so it would not look like a **monopoly** * * *" (testimony of plaintiff, R. 171).

"Where a Bureau has a block of patients — for instance, all the employees of a certain company, and that sort of thing, you are **automatically barred** out from attending those people so contracted for if you don't belong to the Bureau" (testimony of Dr. Campbell, R. 1376).

"* * * if you didn't belong it could be interpreted as a matter of indifference on your part or **hostility** * * *" (ibid, R. 1377).

In summary of this subject, it is justifiable to conclude that the question of monopoly has been under consideration throughout this case. The Walla Walla Medical Bureau was monopolisitic (Pet. 7-8); the Bureau monopolized the Society (see above); the defendant AMA and its branches did and do monopolize the healing professions; and plaintiff by his stubborn resistance to this increasingly degenerate situation endangered the privileged position of the defendants and called down upon his head the wrath of medical authority from Walla Walla to Chicago, not because his influence was great but simply because the monopolistic structure itself has become fundamentally shaky and wrong and reacts violently to effective criticism.

Whether the word monopoly is used at every turn does not alter the facts. When this Honorable Court held against the AMA and its District of Columbia branch in a suit by the dissenting doctors of Group Health, Inc., one of the

grounds on which Certiorari was granted was restraint of trade (317 U. S. 519, 527). But the real issue might just as well be called monopoly.

Plaintiff has phrased his action in terms of conspiracy; but the federal rules as to pleadings are broad, and by necessity broadest of all in conspiracy cases. Underlying all is the fact that the gravamen of the offense is the acts committed, and these were in the furtherance of monopoly and restraint of trade. Repeated violations of due process were perpetrated upon the plaintiff. Men with legitimate motives have no need of illegitimate methods, and certainly not to such an extraordinary degree as in this case.

On Question No. 2

The trial court dismissed the Chicago headquarters branch of the AMA as not doing business in the state of Washington, yet it heard evidence that the Chicago headquarters had held two hearings, engaged in voluminous correspondence and telephone calls, and belatedly directed plaintiff's reinstatement in the Walla Walla branch, which last was of and in itself a proprietary act sufficient to show that the defendant AMA was in fact doing business in the state of Washington.

The AMA also did accept service to appear specially in Washington for the purpose of denying jurisdiction.

Evidence in the case shows that the AMA collected dues in Washington, directed and supervised the formation of the new Grievance Committee disciplinary system, and supervised the operation of the Medical Bureaus in Washington state.

The trial Judge, in denying Petitioner's right of suit against the Chicago headquarters of the AMA in this trial by the technical dismissal of that party, denied Petitioner's

right of due process under the Fifth Amendment of the United States Constitution.

The action of the Appeal Court, in recognizing these facts in its Opinion,

> "* * * Upon his appeal to the American Medical Association he was ordered reinstated on procedural grounds. * * * The American Medical Association was originally included as a party defendant, but was dismissed as such prior to the trial on the ground that it did no business in the State of Washington" (Pet. 31, 33),

merely compounded the error and this action itself was further denial of due process of law, in that it failed to reverse the judgment of the Trial Court or remand the case to the Trial Court for further proceedings.

Petitioner wishes to inform this Honorable Court that even though the AMA did evade trial in the District Court of Washington by an invalid dismissal of service process against it, that the AMA has been confronted with the same issue in a later trial in the District Court in Chicago; and this issue is still pending on appeal to the Circuit Court of Appeals for the Seventh Circuit at the present time.

On Question No. 3

The Appeal Court erred in not finding that the Trial Court ignored an essential part of the testimony. A major portion of plaintiff's claim for damages rests on his disbarment from the defendant hospitals, which disbarment was based on a private contract between the hospitals and the local branch of the AMA specifying that only AMA doctors were permitted to practise in these hospitals (Ex. 306, 299).

It is against public policy that hospitals chartered by the State should exclude properly licensed doctors in that State without specific cause, or delegate their power of exclusion to a private organization such as a local medical society. The hospital is the doctor's workshop and he cannot practise effectively without it. The defendant hospitals accept large amounts of state and federal funds and are spared taxation because of their status as quasi-public institutions.

The Trial Court stated:

> "I concede that the hospital would not have the right to arbitrarily or for improper motive or improper reason reject an application" (Oral Decision, R. 1663),

but a hospital authority testified that even after plaintiff's reinstatement in the medical society, plaintiff was given no specific reason explaining why he was not reinstated in the hospital. He was barred merely because "* * * it (the hospital authority) did not consider it to be in the best interests of the hospital * * *" (R. 1580).

On Question No. 5

Defendants are in error when they state (Br. 11) that "* * * petitioner had designated for printing only a small portion of the testimony." Petitioner designated approximately three-sevenths of the testimony, as shown by his payment to the Clerk of the substantial sum of $3,000.00 prior to the Appeal Court's order that he pay a total of $7,050.00 for printing the entire record.

If the Appeal Court had to have the entire record printed in all cases, as may be inferred from defendants' use of the word "obviously", there would be no purpose in its Rule 17-6 which provides in detail for printing only material portions, with a penalty in the event that "* * * the

appellee shall have caused unnecessary parts of the record to be printed * * *".

On Question No. 6

This Honorable Court is empowered under its Rule 19(b) to grant certiorari where an Appeal Court has sanctioned a sufficient departure from the accepted and usual course of judicial proceedings. Petitioner cites the wholly unreasonable and injudicial action of the Trial Court, which, in its Oral Decision, accepted the finality of the decision by the supreme court of medicine holding that improper procedures were used in plaintiff's expulsion:

> "* * * it does not appear that steps (1), (2), and (4) were followed * * * disqualified itself as an impartial tribunal * * * Accordingly, the Judicial Council holds that the expulsion of Dr. Robinson was invalid and void" (AMA Decision, Ex. 221).
>
> "Now, with reference to the American Medical Association decision, as I understand the attitude of the Defendants here they are not questioning the finality of that decision, nor am I" (Oral Decision of Trial Court, R. 1656).

And then proceeded to find as a matter of both Fact and Law that

> "All of the procedural steps in the expulsion of the Plaintiff Robinson were * * * in substantial compliance with their respective constitutions and by-laws as they then existed and were under the direction of capable legal counsel * * *" (R. 104).

In abandoning the old rule that "* * * on motion to dismiss * * * I am obliged to resolve all conflicts in favor of the Plaintiff * * *" (R. 1622), and substituting the new Rule 41(b) permitting final ruling at the close of Plaintiff's case (R. 1633), the Trial Court not only contradicted itself within its decision, but also the Trial Court went so far to the

other extreme as to condemn everything which even the highest medical court had resolved in favor of Plaintiff.

Miscellaneous matters brought up in defendants' brief.

1. Plaintiff's actions with respect to his patients, Mr. and Mrs. Brooks, are described in his petition but may be summarized as follows: (a) Plaintiff had a right to discuss the disease with the family. (b) Plaintiff had a right to turn these syphilitics over to the health department. (c) Plaintiff had a right to set up any condition, especially proof of good faith, whether by production of a letter dealing with his medical therapeutics or otherwise, as a prerequisite of continuing the doctor-patient relationship. (d) Plaintiff was under no obligation to arrange for another doctor to take care of his patients, recalcitrant or not, but only to advise as to termination of his service, which was done; and patients can and do instantly change to another doctor whenever they so desire.

2. The grievances against Plaintiff were the only ones brought to the Grievance Committee until many months later, according to the testimony of the executive secretary of that committee (R. 951-2), showing that plaintiff was initially the sole object of attention by the committee.

3. Plaintiff's position as to third parties fixing his fees (Def. Br. 4) is explained by the following excerpts from his testimony:

> "Well, my objection in this case was because the inquiry was by a grievance committee which was secret" (R. 928).
>
> "What I meant to convey was this: That if a patient doesn't want to pay a doctor's bill, the best solution is just don't pay it, and I mean what happens then is the doctor just doesn't get his money and, if it is a very serious matter, they can take it to court if they want

to and, otherwise, it works out perfectly well. The patient doesn't pay and is dissatisfied, the doctor loses a patient, and that is a very good way to settle it" (R. 729-730).

4. Did plaintiff have full opportunity for defense? (Def. Br. 5). He could not have had that, because the supreme court of medicine held that the expulsion procedures were improper (Ex. 221).

Respectfully submitted,

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Petitioner prays that the Court may grant an oral hearing on his Petition for Writ of Certiorari.

April 23, 1958